

STATE OF RHODE ISLAND

WASHINGTON, SC.

SUPERIOR COURT

(FILED: September 15, 2021)

M&D TRANSPORTATION, INC.

:

v.

:

C.A. No. WC-2015-0399

:

MICHAEL LONG

:

:

DECISION

MCGUIRL, J. Before this Court is the appeal of Appellant M&D Transportation, Inc. (M&D or Appellant) from the July 17, 2015 decision and order of a Hearing Officer (Hearing Officer) of the Rhode Island Department of Labor and Training Division of Labor Standards (the Department), which ordered M&D to pay Michael Long (Long) \$522.89 in unpaid wages. The Department also ordered M&D to pay interest at the rate of 12 percent, equal to \$62.75, for a total of \$585.64. Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

I

Facts and Travel

M&D hired Long on May 12, 2013. Long was considered an “all over the road driver” and he was paid at a baseline of 35 cents per mile (cpm). *See* July 17, 2015 Department Decision at 1. Long’s last day of employment with M&D was on December 28, 2013. *Id.* Long alleged that M&D did not consistently pay him the baseline rate of 35 cpm, and that he “was not paid as promised per mile.” *Id.* at 2,4.

At the hearing on May 8, 2015, both parties were present and represented by counsel. Long requested payment in the amount of \$522.89.¹ *Id.* at 2. The Hearing Officer found that Long’s wages were fixed at a baseline of 35 cpm. *Id.* at 3. Further, the Hearing Officer found that the 35 cpm was the starting rate and that “at a minimum, Mr. Long would be compensated at the rate of .35 cpm – maybe more, but certainly not less.” *Id.* The Hearing Officer stated that “M&D’s Payroll Breakdown document unambiguously states that “all over the road drivers” start at a baseline of .35 cpm” and nowhere does it state that wages are determined by different types of trips. *Id.* The Appellant acknowledged this point. *Id.* Therefore, the Hearing Officer ordered that M&D pay Long \$522.89, which represents the difference between the 35 cpm Long should have been paid and the lesser amount of 27 cpm, which M&D actually paid Long, as evidenced by M&D’s payroll records. *Id.* at 4. The Hearing Officer also awarded attorneys’ fees to Long’s attorney, Sonja L. Deyoe, in the amount of \$2,925.

On appeal, M&D denies that it owes Long any wages and claims he has misguided calculations. In its memorandum, M&D claims that it compensates drivers based on three different types of compensation depending on various factors. Appellant’s Mem. at 2. In particular, M&D alleges that they compensate drivers for three types of mileage: (1) empty miles, which are “compensable at a rate of \$0.27/mile”; (2) loaded miles for long hauls, which are “compensable at a rate of \$0.35/mile; and (3) loaded miles for short hauls, which are “compensable at a rate of \$0.44/mile.” *Id.* at 2-3. “Empty miles” are defined as “representing a trip where the driver is hauling no revenue, regardless of distance.” *Id.* at 2. “Loaded miles for long hauls” are defined as a trip “in excess of 500 miles where the driver is hauling revenue.” *Id.* at 3. Lastly, “[l]oaded miles

¹ Originally, Long requested \$834.77, but at the hearing and in his post-hearing memorandum, he requested less than his original demand.

for short hauls” are defined as a trip “less than 500 miles where the driver is hauling revenue.” *Id.* M&D also alleges that Long has “been overpaid and unjustly enriched” by \$860.44 by way of cash advance payments, employee healthcare contributions, and payroll overpayments. *Id.* at 1.

II

Standard of Review

Pursuant to § 42-35-15 of the Rhode Island Administrative Procedures Act (APA), “[a]ny person, . . . who has exhausted all administrative remedies available to him or her within [an] agency, and who is aggrieved by a final order in a contested case is entitled to judicial review” by this Court. The Superior Court has jurisdiction to review the board’s decision denying a petitioner’s application. Sec. 42-35-15(b). This Court “may affirm the decision of the agency or remand the case for further proceedings,” and may reverse or modify the agency’s decision if

“substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- “(1) In violation of constitutional or statutory provisions;
- “(2) In excess of the statutory authority of the agency;
- “(3) Made upon unlawful procedure;
- “(4) Affected by other error of law;
- “(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- “(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” Sec. 42-35-15(g).

This Court must not “substitute its judgment for that of the agency as to the weight of the evidence on questions of fact,” and will defer to an agency’s factual determinations as long as they are supported by legally competent evidence on the record. *Id.*; see *Town of Burrillville v. R.I. State Labor Relations Board.*, 921 A.2d 113, 118 (R.I. 2007). Legally competent evidence is defined as “such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means an amount more than a scintilla but less than a preponderance.” *R.I. Temps,*

Inc. v. Department of Labor and Training, Board of Review, 749 A.2d 1121, 1125 (R.I. 2000) (quoting *Center for Behavioral Health, R.I., Inc. v. Barros*, 710 A.2d 680, 684 (R.I. 1998)).

In contrast to the agency's findings of fact, an agency's determinations of law, including issues of statutory interpretation, "are not binding on the reviewing court." *Pawtucket Transfer Operations, LLC v. City of Pawtucket*, 944 A.2d 855, 859 (R.I. 2008) (internal quotation omitted). Instead, this Court reviews the record *de novo* in order "to determine what the law is and its applicability to the facts." *Id.* (internal quotation omitted).

III

Analysis

According to G.L. 1956 § 28-14-1(4), "'Wages' means all amounts at which the labor or service rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, commission basis, or other method of calculating the amount."

Long's position with M&D was considered an "[a]ll over the road driver." *See* Claimant's Ex. 1. According to M&D's "Payroll Breakdown Summary Road Drivers" (Payroll Breakdown), all over the road drivers are paid by the mile. Additionally, the Payroll Breakdown states that "[a]ll over the road drivers start at a baseline of .35 cpm." *Id.* The Hearing Officer points out that Merriam-Webster Dictionary defines "baseline" as "a line serving as a basis; especially one of known measure or position used . . . to calculate or locate something." *See* July 17, 2015 Department Decision at 3 (quoting <http://www.merriamwebster.com/dictionary/baseline>). Further, the Hearing Officer held that the baseline of 35 cpm was the starting rate at which Long would expect to be paid, and "the use of the word 'baseline' suggests that, at a minimum, Mr. Long would be compensated at the rate of .35 cpm – maybe more, but certainly not less." *Id.*

The Hearing Officer determined that “baseline” is the starting point for payment to Long. *See id.* This Court agrees. The Payroll Breakdown is unambiguous, as it states that “[a]ll over the road drivers” start at a baseline of 35 cpm. *See* Claimant’s Ex. 1. Therefore, this Court will not substitute its judgment for that of the agency’s definition of baseline. *See Town of Burrillville*, 921 A.2d at 118-19.

Next, M&D argues that it is entitled to a set-off for amounts that it is owed by Long for insurance benefits and cash advances that were deducted from Long’s paychecks in order for M&D to be reimbursed for the advanced funds. However, § 28-14-24, titled “Set-off of money owed by employee to employer,” states, in pertinent part:

“(a) In any action for unpaid wages brought under the provisions of this chapter, the employer-debtor shall not deduct as a set-off or counterclaim . . . (3) Any money allegedly owed to the employer by the employee; (b) Provided, that any employer granting his employee a loan or advance against future earnings or wages may deduct the loan as a set-off or counterclaim if evidenced by a statement in writing signed by the employee.”

According to § 28-14-24, in an action for unpaid wages, the employer “shall not deduct as a set-off or counterclaim . . . (3) [a]ny money allegedly owed to the employer by the employee.” Here, M&D’s argument for set-off for insurance benefits and cash advances bears no weight in the determination of whether Mr. Long is entitled to wages in the present matter. As the Hearing Officer stated, “[i]f M&D feels as though it has a lawful claim against Mr. Long for money owed to it, then it can pursue that claim in the appropriate forum . . .” *See* July 17, 2015 Department Decision at 4 n.2. The Hearing Officer’s finding in this respect is not in violation of statutory provisions.

IV

Conclusion

After review of the entire record, this Court finds that the Hearing Officer's order—that M&D pay Long \$522.89, which represents the difference between the 35 cpm he should have been paid and the lesser amount of 27 cpm, which M&D actually paid him—is not clearly erroneous or in violation of statutory provisions. This Court finds that the Hearing Officer's decision and order were not arbitrary or capricious and were supported by substantial evidence in the record. Substantial rights of the Appellant have not been prejudiced. Accordingly, the decision and order of the Hearing Officer for the Rhode Island Department of Labor and Training is affirmed.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

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CASE NO: WC-2015-0399

COURT: Washington County Superior Court

DATE DECISION FILED: September 15, 2021

JUSTICE/MAGISTRATE: McGuirl, J.

ATTORNEYS:

For Plaintiff: Robert E. Craven, Esq.

For Defendant: Sonja L. Deyoe, Esq.

For Interested Party: Bernard P. Healy, Esq.